

BOARD OF ZONING APPEALS

MINUTES

6:30 PM

April 30, 2014

City Council Chambers

MEMBERS PRESENT: Bernie Bossio, Bill Burton, Leanne Cardoso, Jim Shaffer and George Papandreas

MEMBERS ABSENT: None

STAFF: Christopher Fletcher, AICP

I. CALL TO ORDER AND ROLL CALL: Bossio called the meeting to order at 6:30 PM and read the standard explanation of the how the Board conducts business and rules for public comments.

II. MATTERS OF BUSINESS:

A. Minutes for the February 19, 2014 Hearing: Papandreas moved to approve as presented; seconded by Cardoso. Motion carried unanimously with Burton abstaining due to absence.

B. Minutes for the March 19, 2014 hearing: Burton moved to approve as presented; seconded by Papandreas. Motion carried unanimously with Cardoso and Shaffer abstaining due to absence.

III. OLD BUSINESS:

A. CU13-07 / Sigma Kappa Sorority / 552 North Spruce Street: Request by Bob Lindsey of LAI Architects, on behalf of the Theta Chi Chapter House Corporation of Sigma Kappa Sorority, for an extension of a conditional use approval of an "Off-Site Parking Facility" use located at 552 North Spruce Street that was approved on 15 MAY 2013; Tax Map 26, Parcel 240; B-1, Neighborhood Business District.

B. V13-04 / Sigma Kappa Sorority / 552 North Spruce Street: Request by Bob Lindsey of LAI Architects, on behalf of the Theta Chi Chapter House Corporation of Sigma Kappa Sorority, for an extension of a variance approval to exceed the maximum building height standard at 553 North Spruce Street that was approved on 15 MAY 2013; Tax Map 26, Parcel 240; B-1, Neighborhood Business District.

C. V13-07 / Sigma Kappa Sorority / 552 North Spruce Street: Request by Bob Lindsey of LAI Architects, on behalf of the Theta Chi Chapter House Corporation of Sigma Kappa Sorority, for an extension of a variance approval to encroach into minimum setback standards at 553 North Spruce Street that was approved on 15 MAY 2013; Tax Map 26, Parcel 240; B-1, Neighborhood Business District.

Bossio recognized Bob Lindsey of LAI Architecture who explained the process was delayed due to extensive bidding for the project and the presence of students.

There being no comments or questions by the Board, Bossio asked if anyone was present to speak in favor of or in opposition to the request. There being no public comments, Bossio declared the public hearing closed.

Papandreas motioned to consider CU13-07, V13-04 and V13-07 at one time; seconded by Burton. Motion carried unanimously.

Papandreas motioned to grant extensions for CU13-07, V13-04 and V13-07 to November 15, 2014; seconded by Burton. Motion carried unanimously.

IV. NEW BUSINESS:

- A. CU14-02 / M&J Property Holdings / 484 Harding Street:** Request by Michael Saab, on behalf of M&J Property Holdings, for conditional use approval of "Parking Lot, Private" use located at 484 Harding Street; Tax Map 11, Parcel 141; R-3, Multi-Family Residential District.

Fletcher read the Staff Report.

Bossio recognized the petitioner, Mark J. Nesselroad of 281 West Run Road, who concurred with the Staff Report.

There being no comments or questions by the Board, Bossio asked if anyone was present to speak in favor of or in opposition to the request. There being no public comments, Bossio declared the public hearing closed.

Fletcher read the staff recommendations.

Shaffer made a motion to find in the positive for the all the Findings of Facts as revised by Staff; seconded by Burton. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 1 – Congestion in the streets is not increased, in that:

Building this parking lot will allow cars "not" to be parked in the street.

Finding of Fact No. 2 – Safety from fire, panic, and other danger is not jeopardized, in that:

This is an open air private parking lot.

Finding of Fact No. 3 – Provision of adequate light and air is not disturbed, in that:

The mosque will use this parking lot during the day for overflow parking.

Finding of Fact No. 4 – Overcrowding of land does not result, in that:

This lot has been laid out to fit approximately nineteen (19) parking spaces.

Finding of Fact No. 5 – Undue congestion of population is not created, in that:

Students were parking all around this structure prior to tearing down building. “Private Parking” signs will be installed to control parking.

Finding of Fact No. 6 – Granting this request will not create inadequate provision of transportation, water, sewage, schools, parks, or other public requirements, in that:

Granting this request will help with the need for parking along Harding Street by providing parking to some of the people parking along that street.

Finding of Fact No. 7 – Value of buildings will be conserved, in that:

It will be a paved lot which will be similar to what is being built across the street.

Finding of Fact No. 8 – The most appropriate use of land is encouraged, in that:

It will provide parking for some cars that were parked along the street.

Papandreas moved to approve CU14-02 with Staff recommended conditions; seconded by Cardoso. Motion carried unanimously.

Bossio reminded Mr. Nesselroad that the Board’s decision can be appealed to Circuit Court within thirty days of receiving written notification from the Planning Division and that any work related to the Board’s decisions during this period would be at the sole financial risk of the petitioner.

- B. CU14-03 / Maxwell’s Place, LLC / 1 Wall Street:** Request by Mark Bowers, on behalf of Maxwell’s Place, LLC, for conditional use approval of “Restaurant, Private Club” use located at 1 Wall Street; Tax Map 26A, Parcel 106; B-4, General Business District.

Fletcher read the Staff Report.

Bossio recognized the petitioner, Mark Bowers of 47 Pineview Lane, who noted the request is for a liquor license for a private club to go along with the restaurant.

Shaffer referred to Bowers’ resume and asked for an explanation on his restaurant experience history. Bowers explained he has worked in the food industry for 16-18 years and the restaurant proposed will serve breakfast and sandwiches for lunch.

Shaffer noted that Bowers primary experience is in bars. Bowers confirmed.

Cardoso referred to hours of operation proposed and asked for clarification. Bowers explained the restaurant would be open for lunch every day of the week except Sunday. Thursday through Saturday would be late night and would include the same menu items offered on their regular menu.

Bossio referred to Bowers work history and asked for the places he served as management. Bowers stated he was a manager for Hummer’s, Brass Alley, and Havannah’s. Bossio noted the establishments mentioned do not serve food on a regular basis and explained the request before the Board is to waive the one year bona-fide restaurant requirement. Bossio asked Bowers if he was knowledgeable on the food costs or percent of labor in the restaurants

mentioned. Bowers stated he did not know and explained he was going to hire people to take care of the restaurant proposed. Bossio asked if those people were present and Bowers said they were not. Bossio explained the Board has to make a decision on the evidence presented.

Papandreas noted the resume showed weakness in past food experience history.

Cardoso expressed concerns with the restaurant becoming primarily a bar and explained the questioning to the petitioner was not to reflect on past work history but rather to look for key factors in making the Board feel confident the proposed establishment would be primarily a restaurant that would serve liquor. Cardoso asked Bowers for his vision of Maxwell's Place and how it would serve the residents of the town. Bowers explained he would like to have an establishment like "Apple Annie's" with breakfast, sandwiches and daily specials.

Bossio noted that "Apple Annie's" did not serve liquor.

Shaffer expressed concerns in the strength of vision with the resume provided and past work history.

Burton stated he would like to see a business plan associated with Maxwell's Place. Bowers stated he did not have a business plan.

Bossio explained the spirit and intent of a one year bona-fide restaurant agreement is for a sit-down dining restaurant experience.

There being no further comments or questions by the Board, Bossio asked if anyone was present to speak in favor of or in opposition to the request.

Bossio recognized John Lichter of 305 Rhode Island Avenue, who owns Maxwell's LLC. Lichter stated they have spent many months and thousands of dollars renovating the restaurant which opened in October 2013. In December 2013 they received a summons notifying them of eviction which is now going through the court system and is ongoing. Lichter noted that Maxwell's LLC will reopen in a different location on High Street in the future.

Bossio asked if a lease agreement was established with the landlord. Litcher confirmed and explained the landlord felt the rent was below market value and requested a new lease to be signed. At that point they were never offered a new lease and became a month-to-month at-will basis.

Bossio declared the public hearing closed.

Bossio offered the petitioner a chance for rebuttal. Petitioner denied.

Fletcher read the staff recommendations.

Burton asked if the Board should table the request until the legal situations are resolved. Bossio noted the legal situation has nothing to do with the Board's decision on this matter.

Cardoso asked if Bowers had standing to apply if he does not have the right to the property. Papandreas did not feel a person had to have a secure location in order to apply for the petition and many people apply and move forward based on the Board's decision.

Shaffer expressed concerns with the weak resume and having no knowledge of food and labor costs.

Papandreas noted the purpose of the one-year bona fide restaurant agreement is to make sure people have the correct experience for a restaurant.

Papandreas made a motion to deny the one-year “bona fide restaurant” waiver requirement provided under Article 1331.06(27)(c) of the Planning and Zoning Code because the petitioner’s written description of the business operations, menu, and testimony in response to the Board’s questions did not clearly demonstrate that the proposed establishment would meet the “bona fide restaurant” requirements for “Restaurant, Private Club” uses in the B-4 District; seconded by Shaffer. Motion carried unanimously.

Bossio reminded Mr. Bowers that the Board’s decision can be appealed to Circuit Court within thirty days of receiving written notification from the Planning Division and that any work related to the Board’s decisions during this period would be at the sole financial risk of the petitioner.

- C. CU14-04 / Iron Horse Tavern, LLC / 140 High Street:** Request by Stephen Dilettos, on behalf of Iron Horse Tavern, LLC, for conditional use approval of “Restaurant, Private Club” use at 140 High Street; Tax Map 28A, Parcel 47; B-4, General Business District.

Fletcher read the Staff Report.

Bossio recognized the petitioner, Stephen Dilettos of 140 High Street who concurred with the Staff report.

Bossio asked if the restaurant would be owned by the same person that owns Mountain State Brewing Company. Dilettos confirmed and explained the restaurant would be more of a pub style.

There being no further comments or questions by the Board, Bossio asked if anyone was present to speak in favor of or in opposition to the request. There being no public comments, Bossio declared the public hearing closed.

Fletcher read the staff recommendations.

Papandreas noted the resume shows experience of the management team, the ownership of Mountain State Brewing Company, front of house, back of house and has been in Morgantown for many years.

Bossio stated he would like to see the process streamlined and would have liked to have the owners present for the petition.

Papandreas noted that downtown will be getting experienced restaurant owners.

Burton noted the location is favorable at the end of High Street and the availability of parking behind the establishment.

Papandreas made a motion to grant the one-year bona-fide restaurant for CU14-04; seconded by Burton. Motion carried unanimously.

Shaffer made a motion to find in the positive for the all the Findings of Facts as revised by Staff; seconded by Papandreas. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 1 – Congestion in the streets is not increased, in that:

The new business (restaurant & pub) should attract the same clientele as the previous restaurant business with sufficient seating capacity. The former Madeleine's Restaurant establishment was a "Restaurant, Private Club" and did not appear to contribute to traffic or parking congestion within the immediate area.

Finding of Fact No. 2 – Safety from fire, panic, and other danger is not jeopardized, in that:

Existing fire codes are being adhered to (proper exits, etc.). All kitchen safety standards to be followed.

Finding of Fact No. 3 – Provision of adequate light and air is not disturbed, in that:

The subject leasable space at 140 High Street is within an existing building that has served as a restaurant for several years. No additions or alterations are proposed that would adversely impact existing sunlight distribution or air flow patterns.

Finding of Fact No. 4 – Overcrowding of land does not result, in that:

The subject leasable space at 140 High Street is an existing restaurant space and seating capacity.

Finding of Fact No. 5 – Undue congestion of population is not created, in that:

The subject leasable space at 140 High Street is an existing restaurant space and seating capacity. The proposed "Restaurant, Private Club" use does not include a residential component.

Finding of Fact No. 6 – Granting this request will not create inadequate provision of transportation, water, sewage, schools, parks, or other public requirements, in that:

The subject leasable space at 140 High Street is an existing restaurant space.

Finding of Fact No. 7 – Value of buildings will be conserved, in that:

The interior of building will be improved, cleaned. No exterior work is proposed.

Finding of Fact No. 8 – The most appropriate use of land is encouraged, in that:

The subject leasable space at 140 High Street is an existing restaurant space.

Papandreas moved to approve CU14-04 with Staff recommended conditions; seconded by Shaffer. Motion carried unanimously.

Bossio reminded Mr. Dilettos that the Board's decision can be appealed to Circuit Court within thirty days of receiving written notification from the Planning Division and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

- D. **V14-17 / Mon County Habitat for Humanity / Jerome Park:** Request by Evan Zuverink, on behalf of Mon County Habitat for Humanity, for variance relief as it relates to side setbacks along Jerome Street; Tax Map 24, Parcel 41; R-1A, Single-Family Residential District.

Fletcher read the Staff Report.

Bossio recognized the petitioner, Evan Zuverink of 3511 University Avenue, who concurred with the Staff Report.

There being no comments or questions by the Board, Bossio asked if anyone was present to speak in favor of or in opposition to the request. There being no public comments, Bossio declared the public hearing closed.

Fletcher read the staff recommendations.

Shaffer made a motion to find in the positive for the all the Findings of Facts as revised by Staff; seconded by Burton. Motion carried unanimously.

NOTE: The following Finding of Fact was included in the motion.

Finding of Fact No. 1 – There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

The distance between the petitioner's corner lot and the paved portion of Jerome Street is approximately 30 feet to 40 feet due to the location, alignment, and maintenance of Jerome Street on the opposite side of the adjoining right-of-way boundary, which should not be adversely impacted by the 1.54 foot encroachment by the constructed single-family dwelling.

Finding of Fact No. 2 – The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

It appears that the single-family dwelling at 1289 Carlisle Avenue does not meet the minimum side setback standard for corner lots. Additionally, the single-family dwellings at 1261 and 1265 Carlisle Avenue do not appear to meet minimum interior side setback standards. The noted addresses are located across Jersey Avenue from the petitioner's development site.

Finding of Fact No. 3 – The granting of this variance will not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

This only creates 6 additional units of affordable housing to the community.

Finding of Fact No. 4 – The granting of this variance will not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

This variance deals with lot layout exclusively. Additionally, affordable housing has no negative impact on market values or land use in the community.

Shaffer moved to approve Case No. V14-17 as follows without conditions:

- a. For the parcel at the corner of Jersey Street and Jerome Street and illustrated on the petitioner's survey as "Lot 1", a 1.54 foot encroachment into the minimum side setback requirement for corner lots facing the street.
- b. For the parcel illustrated on the petitioner's survey as "Lot 2", a 0.38 foot encroachment into the minimum interior side setback requirement.

The motion was seconded by Papandreas. Motion carried unanimously.

Bossio reminded Mr. Zuverink that the Board's decision can be appealed to Circuit Court within thirty days of receiving written notification from the Planning Division and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

- E. BA14-01 / Andrew Smith / Parking Development along Deckers Creek Avenue and Pennsylvania Avenue:** Request by Andrew Smith for an Administrative Appeal under Article 1383 of an administrative determination by the Planning Division concerning the development of parking along Deckers Creek Avenue and Pennsylvania Avenue; Tax Map 29, Parcels 136, 137, 138, 139, 140, 143.1, 143 and 144; B-2, Service Business District.

Bossio informed the Board of the petitioner's request to postpone appeal.

Burton made a motion to table BA14-01; seconded by Papandreas. Motion carried unanimously.

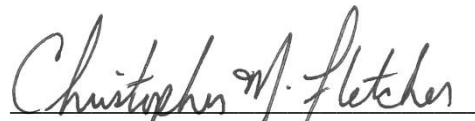
V. ANNOUNCEMENTS: None.

VI. ADJOURNMENT: 7:40 PM

MINUTES APPROVED:

May 21, 2014

BOARD SECRETARY:


Christopher M. Fletcher, AICP